

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

RICARDO HERRERA §
v. § CIVIL ACTION NO. 5:14cv18
TEXAS DEPARTMENT OF CRIMINAL §
JUSTICE, ET AL.

MEMORANDUM ADOPTING REPORTS AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE

The Plaintiff Ricardo Herrera, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The named Defendants are the Texas Department of Criminal Justice, Correctional Institutions Division, Sgt. Sullivan, Brad Moore, Major Michael Collum, Lt. Jason Smith, three unknown members of the “TDCJ Regional Search Team,” and Officer Sertander Jefferson.

Herrera complained about a use of force incident allegedly occurring on October 25, 2012 and asserted the Defendants falsified government documents in an attempt to protect themselves and other prison employees. The Defendants Collum, Moore, Smith, and Sullivan filed a motion for summary judgment asserting their entitlement to qualified and Eleventh Amendment immunity. The Defendants Sertander Jefferson and the Texas Department of Criminal Justice, Correctional Institutions Division filed separate motions to dismiss.

The Magistrate Judge issued a Report recommending the motion for summary judgment filed by Collum, Moore, Smith, and Sullivan be granted as to Herrera’s claim of falsification

of government documents and with regard to any claims for monetary damages brought against the Defendants in their official capacities, and the motion be in all other respects denied. The Magistrate Judge also issued Reports recommending the motions to dismiss filed by Officer Jefferson and the Texas Department of Criminal Justice, Correctional Institutions Division be granted.

No objections were filed to any of these Reports; accordingly, the parties are barred from de novo review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. See United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Reports of the Magistrate Judge (docket no.'s 31, 32, and 33) are ADOPTED as the opinion of the District Court. It is further

ORDERED that the motion for summary judgment (docket no. 18) filed by the Defendants Collum, Sullivan, Moore, and Smith is GRANTED as to the Plaintiff's claim of falsification of government documents and with regard to any claims for monetary damages brought against the Defendants in their official capacities. Those claims are hereby DISMISSED with prejudice. The Defendants' motion for summary judgment is in all other respects DENIED. It is further

ORDERED that the motions to dismiss filed by the Defendants Sertander Jefferson (docket no. 27) and the Texas Department of Criminal Justice, Correctional Institutions Division (docket no. 10) are GRANTED. The claims against these parties are DISMISSED with prejudice and they are terminated as parties to the lawsuit.

SIGNED this 4th day of August, 2015.



ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE